

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION EIGHT

IN THE MATTER OF: THE CREEDE AIRPORT PROPERTIES	)	
	)	
	)	Docket Number: CERCLA-08-2004-0013
UNDER THE AUTHORITY OF THE	)	
COMPREHENSIVE ENVIRONMENTAL	)	AGREEMENT AND COVENANT NOT
RESPONSE, COMPENSATION, AND	)	TO SUE JOHN PARKER, NAVAJO
LIABILITY ACT OF 1980, 42 U.S.C. §	)	DEVELOPMENT LLC, NAVAJO
9601, <u>et seq.</u> , as amended.	)	DEVELOPMENT COMPANY, INC.,
	)	AND THE MINERAL COUNTY
	)	FAIRGROUNDS ASSOCIATION
	)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States on behalf of the United States Environmental Protection Agency (“EPA”), John Parker, Navajo Development, LLC, Navajo Development Company, Inc., and The Mineral County Fairgrounds Association (collectively the “Parties”).

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States. Voluntary cleanup of the property will be performed by John Parker and the Mineral County Fairgrounds Association under two approved plans from the State of Colorado’s voluntary cleanup program.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments hereto.

1. “Agreement” shall mean this Agreement and Covenant Not to Sue.
2. “CDPHE” shall mean the Colorado Department of Public Health and Environment.
3. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
4. “Existing Contamination” shall mean:
  - a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;
  - b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and,
  - c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.
5. “Institutional Controls” shall mean all of those deed restrictions listed in the approved VCUP plans.
6. “MCFA” shall mean the Mineral County Fairgrounds Association.
7. “Navajo” shall mean John Parker, Navajo Development, LLC and Navajo Development Company, Inc.
8. “Parties” shall mean the United States on behalf of EPA and the Settling Respondents.

9. “Property” shall mean Parcel 1, including subparcels 1A, 1B, 1C and 1D, identified in Paragraph 11 below, which is part of the Site.
10. “Settling Respondents” shall mean John Parker, Navajo Development, LLC, Navajo Development Company, Inc., and The Mineral County Fairgrounds Association.
11. “Site” shall mean the area encompassing approximately 297.73 acres, located in Creede, Colorado, in Mineral County, and depicted generally on the map attached as Exhibit 1. The Site includes the following properties:
- a. Parcel 1 - encompasses 104.39 acres located south on State Highway 149 on the east and west sides of Airport Road, including subparcels 1A, 1B, 1C and 1D.
  - b. Parcel 2 - encompasses approximately 21.23 acres located south of the Mineral County Memorial Airport and west of Airport Road.
  - c. Parcel 3 - encompasses approximately 124 acres located south of State Highway 149 and north of the Mineral County Airport.
  - d. Parcel 4 - encompasses approximately 13.51 acres located south of State Highway 149 between Parcels 3 and 1.
  - e. Parcel 5 - encompasses approximately +/- 34.6 acres and consists of that portion of the Mineral County Airport located in Sections 6 and 7 of Township 41 North, Range 1 East of the New Mexico Principal Meridian.
  - f. The surrounding land uses are characterized by rural, agricultural, commercial (airport), residential and open space uses.

12. “United States” shall mean the United States of America, its departments, agencies, and instrumentalities.
13. “VCUP” is an acronym for the State of Colorado’s Voluntary Cleanup Program. “VCUP Application” shall mean Voluntary Cleanup Applications for the “Creede Airport Properties” as approved by the State of Colorado. Separate applications were submitted by Navajo and MCFA, but the two applications addressed all portions of the Site.

### III. STATEMENT OF FACTS

14. This Agreement addresses 297.73 acres, in Creede, Colorado . The town of Creede arose from historical mining camps. The Creede mining boom peaked in 1893, followed by a long period of declining mining in the area. Most of the mining in the area took place in East and West Willow Creek from one to three miles north of Creede. East and West Willow Creek converge less than one mile north of Creede forming the Willow Creek. The town of Creede is at an elevation of 8,838 feet above msl.
15. The Site lies just south of central Creede and is part of a relatively flat field that slopes gently toward the south and southeast along the Rio Grande River Valley. The Rio Grande flows from west to east approximately a half mile south of the property. The Site historically has received runoff from upgradient mining properties. With this runoff have come elevated levels of arsenic, lead, cadmium and zinc. The soil at the Site has been sampled and analyzed; some of the soil tested revealed concentrations of arsenic, cadmium, and lead above CDPHE Soil Remediation Objective levels for commercial land.

16. Within the Site, there are five parcels of land; all are adjacent to or part of the Mineral County Airport in Creede. See Exhibit 1. John Parker, or entities of which John Parker is the principal, owns Parcels 2, 3, and 4. Those entities are Navajo Development, LLC and Navajo Development Company, Inc. Navajo has an option to purchase Parcel 1 (consisting of subparcels 1A, 1B 1C and 1D). Creede Mines, Inc., is the current owner of Parcel 1 and Mineral County is the owner of Parcel 5. Navajo plans to gift subparcels 1B, 1C and 1D to MCFA, a 501(c)(3) non-profit charitable organization, simultaneous with its acquisition of Parcel 1.
17. With the cooperation of the Willow Creek Reclamation Committee, the Mineral County Commissioners, the MCFA and the CDPHE, Navajo has agreed to take sole responsibility for the cleanup of the subparcel 1A under the State's Voluntary Cleanup Program. Navajo's responsibility for cleanup does not extend to subparcels 1B, 1C or 1D. Navajo's acceptance of the responsibility for cleanup has been met with widespread community approval. The first draft of the Voluntary Cleanup application was submitted on July 16, 2002 to the State for review. Navajo submitted a revised application in December of 2002, in response to comments received from the CDPHE concerning the first plan/application. CDPHE approved Navajo's plan on February 28, 2003. As a part of the VCUP, contamination from subparcel 1A and other parcels will be removed and placed in an onsite placement area. This onsite placement area will be located West of Airport Road, and will be managed by Navajo.

18. Following remediation, the proposed use of the Site by Navajo will be primarily for commercial space. Parcel 1, encompasses approximately 104.39 acres. A total of 45.89 acres (subparcels 1B, 1C and 1D) will be donated by Navajo Development to the MCFA for use in conjunction with and as a multipurpose community center. The remainder of Parcel 1 and Parcels 3, 4, and 5 will be put to commercial use, while Parcel 2 will be used for residential development.
19. Cleanup of subparcels 1B, 1C and 1D will be the sole responsibility of the MCFA. MCFA submitted a VCUP Application on November 14, 2003 and CDPHE approval is pending. The MCFA plan is complementary to the Navajo VCUP plan, but MCFA responsibility for cleanup does not extend to subparcel 1A. The MCFA plan provides that contaminated soils in subparcels 1B, 1C and 1D will be capped in place with clean soils and stabilized with native vegetation, landscaping or low permeability structures such as buildings or pavement.
20. This project has significant economic, social and environmental advantages to the town of Creede and Mineral County. The planned development located at the airport and adjacent to the major highway in Mineral County will be in an ideal location to promote and take advantage of economic development in Mineral County. Other Community benefits to this purchase include the development of approximately 21 acres as lower income housing, also a significant need in Mineral County. Navajo has also committed to construction of a portion of a bike trail network on these properties. This project will appropriately cluster development, which will enable sewer use, rather than relying on septic systems, as is the case in most of the county. Also, surface contamination that flows with runoff and is

discharged to the Rio Grande River will be terminated and wind blown contamination will be eliminated through implementation of the VCUP.

21. As noted above, the MCFA will acquire parcels 1B, 1C and 1D, totaling 45.89 acres, by way of donation from Navajo for use in conjunction with and as a multipurpose activity center. This donation of land will provide the MCFA with the acreage it needs to build a much-needed community center. The MCFA's objective is to make this development a community centerpiece, capable of bringing the people together by offering a wide range of activities and services that are currently unavailable. These services and activities are projected to include an indoor equestrian center, 4-H activities, an exercise center that will provide space for roller blading, mountain biking, skate boarding and archery, as well as a place for community and cultural events. Further, this center will increase the tax base and provide some full-time, year-round and several part-time, seasonal jobs for the community. The MCFA development will impart a much-needed boost to community revitalization efforts. The MCFA desires to promote economic development of the Creede area, but is unwilling to accept ownership of contaminated property without protection from environmental liabilities. This Agreement will provide the Settling Respondents with the protection needed to guarantee that this transaction can be completed, thereby assuring a substantial public benefit for the citizens and area of Creede.
22. The Settling Respondents represent, and for the purposes of this Agreement EPA relies upon those representations, that Settling Respondents' involvement with the

Property and the Site has been limited to performing the following environmental studies:

Preliminary Characterization of the Willow Creek Watershed: Existing Conditions and Recommended Actions, Prepared by McCulley, Frick & Gilman, Inc., April 5, 1999;

Airport Corner Land Characterization, Creede, Colorado, Prepared by the Willow Creek Reclamation Committee, January 2001;

Targeted Brownfields Assessment Analytical Results Report, Prepared by CDPHE Hazardous Materials and Waste Management Division, December 31, 2001;

Voluntary Cleanup Application, Creede Airport Corner Site, Mineral County Colorado, Prepared by EnviroGroup limited, for John Parker and submitted to the Colorado Department of Public Health and Environment, July 16, 2002;

Creede Airport Corner VCUP Application Report, v1, Prepared by EnviroGroup limited, for John Parker the Colorado Department of Public Health and Environment, December 20, 2002;

Mining the Alpha Corsair Vein- historical inventory, May 2003;

Private Water Wells in and near the Creede Graben, North of Creede, Colorado-evaluated deep groundwater, May 2003;

Report on Characterization of Fish and Aquatic Macroinvertebrates in Willow Creek, October 31, 2003;

Report on Characterization of Groundwater in the Alluvial Deposits Beneath the Floodplain of Willow Creek Below Creede, May 1, 2003;

Report on Characterization of Waste Rock and Tailings Piles above Creede, Colorado, February 2004;

Report on Surface and Mine Water Sampling and Monitoring in Willow Creek Watershed, Mineral County, Colorado (1999-2002), June 2003;



Restoration of Abandoned Mines Program Willow Creek  
Monitoring Well Installation Project, April 2003;

Re-Vegetation Trials; Willow Creek Floodplain 1999-2003, July  
2003;

Comparison of Electromagnetic and Natural Potential Geophysical  
Investigations near the Emperious Tailings Pile, Creede, Colorado  
(draft), January 2004; and

Voluntary Cleanup Plan Application for Subareas 1B and 1C for  
the Creede Airport Corner Site, Creede, Mineral County, Colorado  
(draft), November 2003 (covers subparcels 1B, 1C, and 1D in this  
Agreement).

this Agreement. The Parties agree that the actions required by the subject and conditions of

limitations contained in Sections VII, VIII, IX, and X, the potential liability of the  
Settling Respondents for the Existing Contamination at the Site or Property which  
might otherwise result from Settling Respondents becoming owners of the  
Property.

24. The Parties agree that the Settling Respondents' entry into this Agreement, and the  
actions undertaken by the Settling Respondents in accordance with this Agreement,  
do not constitute an admission of any liability by the Settling Respondents. The  
resolution of this potential liability, in exchange for provision by the Settling  
Respondents to EPA and the community of a substantial benefit, is in the public  
interest.

#### IV. WORK TO BE PERFORMED

25. To address contamination at the Site and bring the soil within acceptable State  
standards, several remediation procedures will be performed by Navajo under the  
State of Colorado's Voluntary Cleanup Plan. The work to be performed by Navajo

shall be completion of the Navajo VCUP Plan. The approved Navajo VCUP Plan is attached as Exhibit 2. The Navajo VCUP remediation work includes, but is not limited to, the following measures:

- a. Implement erosion and sediment controls during all VCUP earthwork operations to minimize the release of particles with elevated metals concentrations;
- b. Develop an onsite placement area in the portion of the VCUP parcel located west of Airport Road;
- c. Field locate and mark surface and subsurface soils to be excavated during remediation (i.e., soils containing concentrations of lead greater than VCUP remediation standards, and soils containing arsenic concentrations of greater than VCUP remediation standards);
- d. Excavate, load, and haul such impacted soils to the onsite placement area;
- e. Perform post-remediation confirmation sampling and analysis of the excavated areas to demonstrate that implementation of the VCUP has reduced soil exposure risks to acceptable levels;
- f. Conduct a land survey to memorialize the location of the onsite placement area;
- g. Cap the onsite placement area with a permanent barrier, provide a barrier to exposure of the underlying materials and minimize infiltration of water and erosion of the cap;
- h. Grade, smooth, and revegetate the excavated areas;

- i. Adopt and implement appropriate institutional controls to maintain the remedy in the future and assure that future development is protective of the remedy.
- 26. Before Settling Respondents commence a continuous program of physical on-site work pursuant to the VCUPs, they shall provide public notice of the VCUPs in a local news publication, a copy of which shall be provided to EPA. Settling Respondents shall timely provide EPA with a copy of all substantive correspondence with CDPHE related to the VCUPs, including without limitation, any Certificate of Completion and any Application for No Further Action after completion of the VCUPs. Before submitting their respective Certificate of Completion to CDPHE, Settling Respondents shall provide EPA with a draft of the Certificate and an opportunity to comment for a period of fifteen days from receipt. After the VCUP plans have been implemented, development of the Site should reduce exposure further by the construction of buildings and roads that will provide additional barriers to exposure to soils containing elevated metals concentrations.
- 27. To address contamination in subparcels 1B, 1C and 1D, the work to be performed by MCFA shall be completion of the MCFA VCUP Plan, which includes, but is not limited to, the following measures:
  - a. Use erosion and sediment controls during VCUP operations to minimize the further movement of soils with elevated metals concentrations;
  - b. Use phytostabilization (planting of preferential plant species) to stabilize contaminated soils, reduce erosion, and reduce infiltration (through root uptake of water);

- c. Cap the areas where soil lead and arsenic concentrations are greater than VCUP remediation standards. Capping will involve strategic planning with landscape architects, building architects, site developers, and engineers to determine what capping alternative will be employed.
- d. Import and place non-contaminated soils (clean fill material) in areas where grass seed, shrubs, and trees are to be placed. The imported soil will enhance stabilization, promote the growth and density of the landscape features, and further protect potential receptors. These areas will be covered with 6-12 inches of soil;
- e. Place non-contaminated road base and asphalt in areas where parking lots are planned. A stormwater collection system will be incorporated to intercept runoff from the parking lot;
- f. Cap contaminated soils using the proposed structures in areas where buildings and other structures are planned. Specific design considerations will be incorporated as possible to reduce the need to disturb the soils;
- g. Revegetate excavated and graded areas. The site will be graded to control stormwater runoff to reduce erosion and infiltration;
- h. Develop a soil management plan if the excavation and relocation of soils containing lead and/or arsenic concentrations greater than the VCUP remediation standards is required;
- i. Adopt and implement appropriate institutional controls to address potential future site categories. Appropriate institutional controls may include

restricted groundwater use and restricted site development. The MCFA VCUP Plan submitted for approval is attached as Exhibit 3.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

28. Commencing upon the date that it acquires title to any portion of the Property, Settling Respondents agree to provide to EPA, its authorized officers, employees, and representatives, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of overseeing response actions at the Site under federal and state law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of any visits to the Site. This right of access shall terminate 30 days after written certification from Settling Respondents that the VCUPs have been completed. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.
29. With respect to any Property owned or controlled by the Settling Respondents that is located within the Site, within 15 days after the effective date of this Agreement or the date of acquisition of any Property, whichever date is later, the Settling Respondents shall submit to EPA for review and approval a notice to be filed with

the Clerk and Recorder's Office or other appropriate office in Mineral County, State of Colorado, which shall provide notice to all successors-in-title that Settling Respondents have entered an agreement with EPA requiring implementation of the remedy at the Site. Such notice shall identify the EPA docket number, name and effective date of the agreement. The Settling Respondents shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Respondents shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s). Recordation of an Environmental Covenant pursuant to Colorado law, which contains the same notice language as above, may satisfy this requirement.

30. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation with the EPA as outlined by this Agreement and the VCUP remediation guidelines. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement and Section IV (Work to be Performed). Settling Respondents may satisfy the provisions of this paragraph by recordation of this Agreement and by providing a Memorandum of Agreement, the language of which is approved by EPA, in lieu of providing a copy of this Agreement.

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## **VI. DUE CARE/COOPERATION**

31. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

## VII. CERTIFICATION

32. By entering into this agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to their qualifications for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the

United States determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### **VIII. UNITED STATES' COVENANT NOT TO SUE**

33. Subject to the Reservation of Rights in Section IX of this Agreement, and upon completion of the work specified in paragraphs 25 and 26 of Section IV Work to Be Performed to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against Navajo for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 with respect to the Existing Contamination associated with subparcels 1A, 1B, 1C, and 1D.

34. Subject to the Reservation of Rights in Section IX of this Agreement, and upon completion of the work specified in paragraph 27 of Section IV Work to Be Performed to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against MCFA for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 with respect to the Existing Contamination associated with subparcels 1B, 1C and 1D.

#### **IX. RESERVATION OF RIGHTS**

35. The United States' covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII. The United States reserves and the Agreement is without prejudice to all rights against



Settling Respondents with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Work to be Performed), Section V (Access/Notice to Successors in Interest), and Section VI (Due Care/Cooperation);
- b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees;
- c. any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;
- d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and
- g. liability for violations of local, State or federal law or regulations.

36. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

37. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
38. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions, which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that they are acquiring Property where response actions may be required.

**X. SETTLING RESPONDENTS' COVENANT NOT TO SUE**

39. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. 9606(b)(2), 9611, 9612, 9613 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any

claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

40. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XI. PARTIES BOUND/TRANSFER OF COVENANT

41. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondents, their officers, directors, employees and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.
42. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.
43. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

44. In the event of an assignment or transfer of any portion of the Property or an assignment or transfer of an interest in a portion of the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of any portion of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA. The provisions of this Paragraph 43 do not apply to an assignment or transfer to a Settling Respondent.

## **XII. DISCLAIMER**

45. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Site is fit for any particular purpose.

## **XIII. DOCUMENT RETENTION**

46. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the

end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA. Documents will be retained for ten years or until the work is performed to the satisfaction of the EPA, whichever is longer.

#### **XIV. PAYMENT OF COSTS**

47. If any Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Work to be Performed) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

#### **XV. NOTICES AND SUBMISSIONS**

48. Whenever, by the terms of this Agreement notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written requirement of this Agreement with respect to EPA and the Settling Respondents.

##### **As to EPA**

Mike Wireman, EPR-PS  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202

##### **As to Settling Respondents**

Navajo Development, LLC  
Navajo Development Company, Inc.

John Parker  
1140 Cherokee #801  
Denver, Colorado 80204

Burns, Figa & Will, P.C.  
Attn: J. Kemper Will, Esq.  
6400 South Fiddler's Green Circle  
Suite 1030  
Englewood, Colorado 80111

Mineral County Fairgrounds Association  
Attn: Mr. Zeke Ward  
P.O. Box 61 Creede, Colorado 81130

## XVI. EFFECTIVE DATE

49. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and in response to any public comments received.

## XVII. TERMINATION

50. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).
51. If Navajo does not become the owner of the Property or if the Navajo VCUP is not completed by the time period permitted by the VCUP program, including any extensions given by the CDPHE, then the terms of this Agreement shall become null and void as between Navajo and the United States.
52. If Navajo does not deed subparcels 1B, 1C and 1D to MCFA or if the MCFA VCUP is not completed by the time period permitted by the VCUP program, including any extensions given by the CDPHE, then the terms of this Agreement shall become null and void as between MCFA and the United States.

## XVIII. CONTRIBUTION PROTECTION

53. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States, by the Settling Respondents or any other person for the Site with respect to Existing Contamination.
54. The Settling Respondents agree that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.
55. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

#### **XIX. EXHIBITS**

56. Exhibit 1 shall mean a map of the Site.
57. Exhibit 2 shall mean the approved Navajo VCUP Plan.
58. Exhibit 3 shall mean the submitted MCFA VCUP Plan.

#### **XX. PUBLIC COMMENT**



59. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. Notice and availability of this Agreement will published in the Federal Register and the Mineral County newspaper, the Mineral County Miner.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

SIGNED  
Robert E. Roberts, Regional Administrator  
Region 8

22 March 04  
Date

UNITED STATES DEPARTMENT OF JUSTICE

BY:

SIGNED  
Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

4.19.04  
Date

IT IS SO AGREED:

BY:

SIGNED  
John Parker, for:  
John Parker, Navajo Development LLC,  
Navajo Development Company, Inc.

03/16/04  
Date

IT IS SO AGREED:

BY:

SIGNED  
Marvin K. Ward  
The Mineral County Fairgrounds Association

3-16-04  
Date

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON JUNE 9, 2004.